

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1724 of 2017
and
Crl.M.P.No.14207 of 2017

R Kalaiselvi

... Petitioner

Vs.

1.The Secretary to the Government
Home Prohibition and Excise Department
Secretariat
Chennai - 600 009.

2.The District Magistrate and District Collector,
Salem District
Salem

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 17.08.2017 in CMP No.47/GOONDA/C2/2017 against the petitioner's son Raghu @ Raghunathan, Male, aged 28 years, S/o Rangasamy, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S. Senthilvel
For Respondents : Mr.V.M.R.Rajentran,
Addl. Public Prosecutor.

O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J)

Crl.M.P.No.14207 of 2017

1. Crl.M.P.No.14207 of 2017 is an application seeking for early hearing of HCP No.1724 of 2017.

2. On 15.09.2017, when notice was issued in the main matter by the predecessor bench, it was indicated that the main matter shall be taken up for hearing on 20.12.2017. Since the captioned application Crl.M.P.No.14207 of 2017 came up before us for hearing on 14.11.2017, we had re-notified the matter to 20.11.2017. The reason of the same was that it was contended by the learned counsel for the petitioner that apart from anything else, there was a delay in dealing with the detenu's representation. The learned Additional Public Prosecutor was directed to obtain instruction. The learned Additional Public Prosecutor has obtained instructions. He informs us that there is a delay in dealing with the detenu's representation.

3. For the reasons given above, we are inclined to allow the prayer sought for in the petition in Crl.M.P.No.14207 of 2017. Accordingly, Crl.M.P.No.1427 of 2017 is allowed.

4. With the consent of the learned Additional Public Prosecutor, the main petition is taken up and the learned Additional Public Prosecutor says that he will argue the case based on the records.

5. The petitioner is the mother of the detenu, namely, Raghu @ Raghunathan, son of Rangasamy, male, aged about 28 years. The detenu has been detained by the second respondent by his order in CMP No.47/GOONDA/C2/2017 dated 17.08.2017, holding him to be a "Goonda", as contemplated under 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

6. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

7. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay with regard to the same.

8. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the

Constitution of India.

9. The Detention Order in question was passed on 17.08.2017. The petitioner made a representation dated 28.08.2017 and the same was received on 28.08.2017. Thereafter, remarks were called for by the Government from the Detaining Authority on 28.08.2017 in respect of the representation. The remarks were duly received on 16.10.2017. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation on 30.10.2017.

10. It is the contention of the petitioner that there was a delay of 48 days in submitting the remarks by the Detaining Authority, of which 16 days were Government Holidays and hence there was an inordinate delay of 32 days in submitting the remarks.

11. In *Rekha vs. State of Tamil Nadu*, reported in 2011 (5) SCC 244, the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

12. In *Sumaiya vs. The Secretary to Government*, reported in 2007 (2) MWN (Cr.) 145, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

13. In *Tara Chand vs. State of Rajasthan and others*, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

14. In the subject case, admittedly, there is an inordinate and unexplained delay of 32 days in submitting the remarks by the Detaining Authority in respect of the first representation. The impugned detention order is, therefore, liable to be quashed.

15. In the result, the Habeas Corpus Petition is allowed and the order of detention in CMP No.47/GOONDA/C2/2017 dated 17.08.2017, passed by the second respondent is set aside. The detenu, namely, Raghu @ Raghunathan, son of Rangasamy, male, aged about 28 years, is directed to be released forthwith unless his detention is required in another case. Given the nature of

the case, this order will be communicated to the concerned Jail Superintendent by the Registrar General of this Court via Fax.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Secretary to the Government
Home Prohibition and Excise Department
Secretariat
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Salem District
Salem
3. The Superintendent of Central Prison,
Salem
- 4.The Public Prosecutor,
Madras High Court,
Chennai.
- 5.The Chief Secretary to Government
Public (Law and Order F) Department
Fort St.George Chennai-9

H.C.P.No.1724 of 2017

WEB COPY

aa22/11/2017